

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

23.311 ACRES OF LAND, MORE OR
LESS, SITUATE IN HIDALGO COUNTY,
STATE OF TEXAS; AND FRANK
SCHUSTER FARMS, INC., ET AL.,

Defendants.

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CASE NO. 7:19-CV-407

JOINT DISCOVERY/CASE MANAGEMENT PLAN UNDER FRCP 26(f)

- 1. State when and in what manner the parties conferred as required by Rule 26(f), and identify the counsel and/or parties who participated in the conference.**

The parties conferred on January 24, 2020.

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- 2. List by case number and court any cases related to this one that are pending in any state or federal court and describe how they are related.**

None at this time.

- 3. Briefly describe what this case is about.**

This is a civil action brought by the United States of America under the power of eminent domain through a Declaration of Taking at the request of the Secretary of the Department of Homeland Security, through the Acquisition Program Manager, Wall Program Management Office, U.S. Border Patrol Program Management Office Directorate, U.S. Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security, for the taking of property under the power of eminent domain through a Declaration of Taking, and for the determination and award of just compensation to the owners and parties in interest.

- 4. Specify the allegation of federal jurisdiction.**

Plaintiff alleges the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1358.

- 5. Name the parties who disagree with the jurisdictional allegations and state their reasons.**

None.

- 6. List anticipated additional parties that should be included, when they can be added, and by which parties desires their inclusion.**

None.

7. List anticipated interventions.

None.

8. Describe any class-action issues.

None.

9. State whether each party represents that it has made the initial disclosures required by FRCP 26(a). If not, describe the arrangements that have been made to complete such disclosures.

Parties will provide initial disclosures pursuant to Rule 26(a)(1)(A) prior to the Initial Pretrial and Scheduling Conference set for February 5, 2020.

10. Describe the discovery plan proposed by the parties, including:

A. What changes should be made in the timing, form or requirement for disclosures under Rule 26(a)?

None.

B. When and to whom the plaintiff anticipates it may send interrogatories?

The United States anticipates sending interrogatories to the Property Owner after the entry of this Court's scheduling order.

C. When and to whom the defendant anticipates it may send interrogatories?

The Defendants anticipate sending interrogatories to the United States.

D. Of whom and by when the plaintiff anticipates taking oral depositions?

The United States anticipates taking oral depositions of the Property Owner's fact witnesses by August 30, 2020.

E. Of whom and by when the defendant anticipates taking oral depositions?

The Defendants anticipate taking the oral depositions of representative(s) of the United States, non-party design representative(s), and non-party construction representative(s) and anticipates such depositions could be completed by August 30, 2020 assuming no delays in written discovery and subpoenas, if any.

F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B),

and when the opposing party will be able to designate responsive experts and provide their reports?

The Defendants are the parties with the burden of proof. The United States is not opposed to designating experts and providing reports required by Rule 26(a)(2)(B) on the same date as the Defendant. The United States and Defendants agree to designate experts no later than September 30, 2020.

G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report)?

The Defendants are the parties with the burden of proof. Defendants anticipate depositing any experts designated by the United States by the end of the discovery period as set out by the Court in its Scheduling Order.

H. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report)?

The United States anticipates depositing any experts designated by the Defendant by the end of the discovery period as set out by the Court in its Scheduling Order.

11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

The parties are in agreement on the discovery plan.

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

The United States has met with Defendants multiple times regarding location and irrigation issues with the fence swath. Defendants contend that no detailed design documents have been exchanged.

13. State the date the planned discovery can reasonably be completed.

The parties anticipate that discovery can be reasonably completed by December 18, 2020.

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

The parties continue to engage in settlement negotiations, but have not been able to determine or agree on appropriate compensation for the taking. Defendants contend that is due in part due to a lack of information needed to prepare a counterproposal. The parties are hopeful a settlement can be reached prior to the time of trial.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

The parties have agreed to a scheduling order that requires expert reports be completed by a certain date. On or before their completion, the parties will resume settlement negotiations in detail.

Prior to filing suit, on or about December 5, 2018, Nicholas Laurent, attorney for Defendant Frank Schuster, emailed Sandra B. Riggs requesting copy of the border barrier design plans alleging that acquisition of a fee estate would compromise his clients right to control access onto or through its remaining property and requesting that the government consider acquiring an easement rather than fee simple title, and that the governments' contractor work with the Owners to insure that irrigation of the remaining property is not interrupted during construction.

On December 18, 2018, Representatives from U.S. Border Patrol, U.S. Army Corps Engineers, McAllen Real Estate and U.S. Attorneys met with landowners Frank Schuster, Becky Jones, Foss Jones and their attorney Roy Brandys to discuss the letter of December 5, 2018.

On December 21, 2018 Loren Flossman, Wall Program Portfolio Manager, mailed letter to Nicholas Laurent stating: (a) CBP would provide the design contractors (not Defendants) the requested design for the access ramp, (b) CBP will schedule a follow-up meeting with Owners once the 65% design is complete, and (c) evaluate the estate required for the project and include it in the offer to sell. The estate (fee) to be acquired was provided to Mr. Laurent in offer letter and Offer to Sell dated May 16, 2019.

On May 28, 2019, USACE sent Nicholas Laurent FedEx package with value letter and offer to sell.

June 21, 2019 Richard Freeman and Sam Mahler called Nicholas Laurent to speak about the fair market value that was offered for the purchase of the tract. Mr. Laurent informed them that his clients would have to review the 65% design plans to adequately understand the taking before a counterproposal could be prepared.

On August 6, 2019, Mr. Maher emailed Nicholas Laurent a "Tenant Disclaimer Form".

On August 9, 2019, Mr. Mahler and Agent Railey met with the Owners at BP Sector Office, Nicholas Laurent and Brad Snow participated via conference call and discussed design plans and drainage issues.

On October 22, 2019 AUSAs John Smith and Hilda Garcia, and Roy Brandys, attorney for property owner, conferenced about the main concerns of the Owners but monetary settlement discussions were not engaged because property owners were requiring the design plans so as to fully understand the nature of the taking prior to any talks about dollar amounts.

On November 14, 2019: Roy Brandys, Nicholas Laurent, Ron Railey and U.S. Attorney Hilda Garcia Concepcion met at the U.S. Attorney's office in McAllen and discussed drainage issues and design plans that could be shared with property owners.

On December 3, 2019, AUSA Hilda Garcia sent an updated email to Nicholas Laurent, Roy Brandys regarding drainage and design plans, and need to proceed with the filing of the DT.

On December 4, 2019, Nicholas Laurent replied that he would speak to his clients and that he understood about the government might need to proceed to filing DT.

Assistant United States Attorney John A. Smith has had multiple conversations with property owner's counsel regarding issues such as possession of the property, drainage and design plans, and possible monetary settlement for just compensation.

Defendants contend that no design plans have been provided to date. Defendants anticipate promptly requesting design plans in discovery and upon receipt will review any such plans and work in good faith to prepare a counterproposal based on the design plans provided.

- 16. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable and state when such a technique may be effectively used in this case.**

The parties do not think alternative dispute resolution in the form of formal mediation is applicable at this stage given the unique issues in federal land condemnation cases however, the parties do believe that an informal settlement conference between the parties is suitable once the parties have exchanged expert reports. If an informal settlement conference is not fruitful perhaps a formal mediation would be appropriate.

- 17. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.**

The parties do not agree to this case being tried before a magistrate judge.

- 18. State whether a jury demand has been made and if it was made on time.**

Plaintiff has not made a demand for a jury trial. Defendants have made a jury demand in their Motion to Dismiss and For More Definite Statement, and Subject Thereto, Original Answer, Affirmative Defenses, and Jury Demand of Defendants Frank Schuster Farms, Inc. and El Sabino Family Farms, LLC (Dkt. # 7) filed on January 21, 2020.

- 19. Specify the number of hours it will take to present the evidence in this case.**

The parties anticipate that it will take no more than 48 hours to try this case.

- 20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.**

The United States has filed a motion for immediate possession (Docket No. 9) and has deposited the estimated just compensation of Three Hundred and Ten Thousand, Eight Hundred and Seventy-Three dollars (\$310, 873.00) into the Court's Registry (Docket No. 5). Defendants are opposed to the motion and anticipate filing a response before the submission deadline.

- 21. List other motions pending.**

None.

- 22. Indicate other matters peculiar to this case, including discovery that deserve the special attention of the court at the conference.**

It is possible that rebuttal experts may be needed in this matter. The United States requests that the Court set a rebuttal expert deadline for forty-five (45) days after the date of the mutual expert report exchange. The Defendants anticipate some third-party discovery of the design and construction contractors via subpoenas.

- 23. List the names, bar numbers, addresses, and telephone numbers of all counsel.**

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 24, 2020, a copy of the foregoing document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on counsel of record.

By: s/ Hilda M. Garcia Concepcion

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